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Equal Employment Opportunity Commission v. Kreisler Drug No. 3, Inc.

Judge John T. Maughmer

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Equal Employment Opportunity Commission v. Kaiser Drug No. 3, Inc.

Keywords

EEOC, Kaiser Drug No. 3 Inc, 03-0345-CV-W-JTM, Consent Decree, Disparate Treatment, Retaliation, Termination, Terms and Conditions, Sex, Female, Healthcare, Title VII, Employment Law

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

V.

KREISLER DRUG NO. 3, INC.

Defendant.

CASE NO. 03-0345-CV-W-JTM

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission has instituted this action alleging that Defendant Kreisler Drug No. 3, Inc., violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 when it discriminated against Cathy Foster and other female employees in the terms and conditions of their employment because of their sex and then terminated Ms. Foster in retaliation for her complaints about the discriminatory treatment and her contacting the Equal Employment Opportunity Commission. Kreisler Drug No. 3, Inc. denies these allegations and states that it has complied with Title VII and other federal and state employment laws. For purposes of settlement and compromise only, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay and burden of further litigation;

THEREFORE, it is the finding of this Court, made on the pleadings and on the record as a whole and upon agreement of the parties, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action, (ii) the requirements of Title VII will be carried out by the implementation of this Decree, (iii) this Decree is intended to and does resolve all matters in

controversy in this lawsuit among the parties, and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. General Provisions

1. This Decree, being entered with the consent of the parties for purposes of settlement, shall not constitute an adjudication on the merits of this lawsuit and shall not be construed as an admission by Defendant of any violation of Title VII or any executive order, law, rule or regulation dealing with or in connection with sex discrimination in employment.

II. Relief for Charging Party

2. Within fifteen (15) days after this Decree is approved by the Court, Defendant shall forward to Cathy Foster the following payments:

- a. \$24,000.00 in settlement of the claims for backpay and frontpay, less only any applicable deductions for the employee's portion of FICA and applicable federal and state income tax withholdings;
- b. \$16,000.00 in settlement of the claims for compensatory and punitive damages.

3. Defendant shall forward to Cathy Foster, with the checks described above, an itemized statement of withholdings for each amount withheld, including for the employee share of FICA and the applicable federal and state income withholdings.

III. Injunctive Relief

4. Defendant shall not discriminate or retaliate against any person because he or she has opposed any practices alleged in this action as unlawful under Title VII, has participated in an investigation conducted under Title VII with respect to this complaint, or because he or she has participated in this lawsuit or has benefitted in any way as a result of this Consent Decree.

5. Defendant shall not discriminate on the basis of sex in hiring, firing, work assignment, pay, evaluation, promotion or any other term or condition of employment. Defendant shall not retaliate against any employee who opposes any practice declared unlawful under Title VII; or files a charge; or gives testimony or assistance; or participates in any manner in any investigation, proceeding, or hearing under Title VII.

6. Within fifteen (15) days after this Decree is approved by the Court, Defendant shall provide Cathy Foster with a letter of recommendation, attached as Exhibit A, signed by an owner of Defendant. If requested for information concerning Cathy Foster's employment, Defendant will not provide any information that is inconsistent with the letter attached as Exhibit A.

7. Within thirty (30) days after this Decree is approved by the Court, Defendant shall provide training for its owners and all management and supervisory employees regarding federal employment discrimination laws and employees' rights under these laws, including protections against unlawful retaliation. This training shall be presented by Larry Schumaker, and may be attended by a representative of the EEOC.

IV. Posting and Policies

8. Within thirty (30) days after this Decree is approved by the Court, Defendant shall implement an anti-discrimination policy prohibiting discrimination on the basis of sex in hiring,

firing, work assignment, pay, evaluation, promotion or any other term or condition of employment; harassment or creation of a hostile work environment on the basis of sex; and retaliation against any employee who opposes any practice declared unlawful under Title VII, including filing a charge, giving testimony or assistance, or participating in any investigation, proceeding, or hearing under Title VII. Defendant shall implement procedures for the reporting of complaints of discrimination, including multiple avenues for reporting. Defendant shall discipline, up to and including termination, managers and supervisors who fail to adhere to the company's anti-discrimination policy and shall include adherence to the company's anti-discrimination policy in its evaluations of managers and supervisors.

9. Defendant shall post and cause to remain posted the posters required to be displayed in the workplace by Commission Regulations, 29 C.F.R. § 1601.30.

10. Defendant shall post and cause to remain posted copies of the notice attached hereto as Exhibit C in locations publicly visible to all employees for a period of eighteen (18) months starting from the date of entry of this Decree.

V. Reporting

11. Within thirty (30) days after this Decree is approved by the Court, Defendant shall forward to the Commission's Regional Attorney in its St. Louis District Office a copy of the checks and statement of withholdings forwarded to Charging Party as described in paragraphs 2 and 3 above.

12. Within forty-five (45) days after this Decree is approved by the Court, Defendant shall forward to the Commission's Regional Attorney in its St. Louis District Office a letter signed by its chief officer stating that it has complied with the requirements of paragraphs 6, 7, and 8 above, describing the manner and dates on which such compliance was effected.

13. Within forty-five (45) days after this Decree is approved by the Court, Defendant shall prepare and submit to the Commission's Regional Attorney in its St. Louis District Office a letter signed by its chief officer stating that the notices have been posted as required by paragraphs 9 and 10 above.

14. Every nine months for the term of this Decree, Defendant shall submit to the Commission's Regional Attorney in its St. Louis District Office a report of all complaints of discriminatory treatment that were responded to during the previous nine months, including the name, address, phone number and job title of the person making the complaint, a brief description of the complaint, and a description of the company's response to the complaint.

VI. Notice and Opportunity to Cure

15. If, during the term of this Decree, the Commission believes that Defendant is in violation of this Decree, the Commission shall notify Defendant in writing about the alleged violation, describing the nature of the alleged violation and the relevant portion of the Decree.

16. Within ten (10) days of receiving a notice described in paragraph 18, Defendant shall respond to the Commission in writing with Defendant's position with respect to the alleged violation, including what steps, if any, Defendant has taken or will take to cure the alleged violation. If the Commission is satisfied that the alleged violation of the Decree has been corrected, it will take no further action against Defendant and will not bring the matter before the Court.

17. The Commission shall not be entitled to seek relief from the Court for any alleged violation of this Decree until it has provided Defendant with notice and an opportunity to cure the alleged violation as provided in paragraphs 15 and 16.

VI. Term and Effect of Decree

18. By entering into this Decree the parties do not intend to resolve any charges of discrimination currently pending before the Commission other than the charge that created the procedural foundation for the complaint in this case.

19. This Decree shall be binding upon the parties hereto, their successors and assigns.

20. This Decree shall be for a period of eighteen (18) months and can be extended only for good cause shown. During the Decree's term the Court shall retain jurisdiction of this cause for purposes of compliance.

21. Each party shall bear its own costs.

BY CONSENT:

FOR PLAINTIFF:

ERIC S. DREIBAND
General Counsel

/s/ Robert G. Johnson
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SO ORDERED:

/s/ John T. Maughmer
John T. Maughmer
Chief United States Magistrate Judge

EXHIBIT A

LETTER OF RECOMMENDATION (On Defendant's Letterhead)

Kreisler Drug No. 3, Inc. employed Cathy Foster from April 1991 to September 2001. For the last five years of her employment with Kreisler, Ms. Foster was the store's Sporting Goods Manager. During her employment with Kreisler Drug No. 3, Inc., Cathy Foster satisfactorily performed all of her job duties.

EXHIBIT C

NOTICE TO EMPLOYEES

In cooperation with the EEOC, this Notice is posted as part of a remedy agreed to pursuant to a Consent Decree entered in the case of *Equal Employment Opportunity Commission (EEOC) v. Kreisher Drug No. 3, Inc.*, Case No. 03-0345-CV-W-JTM, on file in the United States District Court for the Western District of Missouri, Western Division in Kansas City, Missouri. The agreed remedy as set forth in the Consent Decree includes monetary relief for a former employee, injunctive relief in the form of new policies and training, and reaffirmation of our commitment to not discriminate on the basis of sex in hiring, firing, work assignment, pay, promotion or other terms or conditions of employment and to not retaliate against any employee who reports discriminatory treatment.

State and Federal law prohibit discrimination against any employee because of race, national origin, color, religion, sex, disability or age (forty and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment. The law also prohibits retaliation against persons who complain of or oppose practices they believe are discriminatory on the basis of race, national origin, color, religion, sex, disability or age (forty and over), and it prohibits retaliation against persons who file charges with the EEOC, or who participate in or cooperate with an EEOC investigation.

Kreisher Drug No. 3, Inc. supports and will comply with these laws in all respects and will not take any action against employees because they have exercised their rights under the law. We will not tolerate discrimination in employment, nor will we tolerate retaliation against any employee for exercising rights under law.

Employees should feel free to report instances of discriminatory treatment to their supervisor or the store owners at any time. Kreisher Drug No. 3, Inc. has established policies and procedures to promptly investigate any such reports and to protect the person making the reports from retaliation. If the situation is not resolved to your satisfaction, or if you feel uncomfortable reporting a problem to your supervisor, we strongly encourage you to communicate your concern to Paul Hendricks or Jim Naber. In addition, employees are also free to make complaints about employment discrimination to the Office of the Regional Attorney, United States Equal Employment Opportunity Commission, Kansas City Area Office, 400 State Avenue, Suite 905, Kansas City, KS 66101 (Attention: Andrea G. Baran, Senior Trial Attorney) or by telephone to (913) 551-5848.

Please join us in supporting and promoting equal employment opportunity for all.